

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

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|---------------------|---|----------------------------|
| Michael Lee Gordon, | : | |
| | : | |
| Petitioner | : | Civil Action 2:09-cv-00929 |
| | : | |
| v. | : | Judge Sargus |
| | : | |
| State of Ohio | : | Magistrate Judge Abel |
| | : | |
| Respondent | : | |

Report and Recommendation

Petitioner Michael Lee Gordon, a federal prisoner challenging state criminal convictions, brings this action under 28 U.S.C. §2254 for a petition for writ of habeas corpus. This matter is before the Magistrate Judge for preliminary consideration under Rule 4, Rules Governing Section 2254 Cases in the United States District Courts.

The petition alleges that the prosecutor violated *Brady v. Maryland*, 373 U.S. 83 (1963) by failing to disclose a witness's statements that Gordon was not present when the victim was murdered. However, Gordon previously filed a habeas corpus petition in January 2006. *Michael Lee Gordon v. State of Ohio*, 2:06-cv-65 (S.D. Ohio). On October 26, 2006, the Court entered judgment denying the petition. Gordon appealed. On December 12, 2007, the Court of Appeals affirmed the District Court's decision. Under the provisions of 28 U.S.C. § 2244(b)(3)(A) and (C) a second or successive petition cannot be filed in the district court unless petitioner files an application in the court of appeals and that court issues an order authorizing the filing of the petition.

The Magistrate Judge RECOMMENDS that under the procedures adopted in *In re Jonathan Sims*, 111 F.3d 45, 47 (6th Cir. 1997) this Court TRANSFER this case to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. §1631.

If any party objects to this Report and Recommendation, that party may, within ten (10) days, file and serve on all parties a motion for reconsideration by the Court, specifically designating this Report and Recommendation, and the part thereof in question, as well as the basis for objection thereto. See 28 U.S.C. §636(b)(1)(B); Fed. R. Civ. P. 72(b).

The parties are specifically advised that failure to object to the *Report and Recommendation* will result in a waiver of the right to have the district judge review the *Report and Recommendation de novo*, and also operates as a waiver of the right to appeal the decision of the District Court adopting the *Report and Recommendation*. See *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

s/Mark R. Abel
United States Magistrate Judge